

Policy Guidance and Proposed Grant Condition

August 9, 1988

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-7000

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: Robert W. Dolin, Manager, Columbus Field Office, 5.3S

FROM: Jack R. Stokvis, General Deputy Assistant Secretary for CPD, CD

SUBJECT: Policy Guidance and Proposed Grant Condition City of Cincinnati

This is in response to your memorandum of April 21, 1988, and subsequent conversations between our offices regarding citizen participation activities in the City of Cincinnati. We have also revised your proposed grant condition. In this memo we provide the requested advice on both the type and scope of activities that can be considered legitimate citizen participation endeavors, and whether the City's procedure of identifying specific projects to be funded after the Final Statement constitutes contingency funding. We also provide a format and guidance on the City's FY 88 Block Grant condition for citizen participation performance, and describe the methods used to structure the grant condition.

All information provided by HUD Columbus and the City of Cincinnati was closely reviewed. Notwithstanding any previous policy or regulatory guidance provided to the City of Cincinnati, we have concluded that the regulations have consistently required in 24 CFR 570.206(b) that citizen participation activities include:

"The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being carried out with CDBG funds."

The clear intent of this provision, considering its location with other soft costs under the administration cost category, is to allow CDBG funds to be spent to keep citizens informed about the CDBG program and to otherwise assist them so that their concerns can be taken into consideration during all phases of the program. All activities carried out under this provision must relate to citizen participation as described above, either the provision of information or other resources to keep citizens informed about a city's CDBG programs. All of the administrative costs listed in 24 CFR 570.206, including citizen participation costs, must be consistent with the opening statement in that section of the regulations, which identifies as eligible the "payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed in whole or in part with funds provided under this part and housing activities covered in the recipient's Housing Assistance Plan." (Emphasis added) That language, as well as the language in Section 570.206(b) quoted above, has been in the CDBG regulations since March 1, 1978.

Examples of citizen participation costs which are eligible when related to the program include: the salaries of staff persons who provide direct technical assistance to citizens, elected officials, and businesses regarding a community's Block Grant Program, publicity costs of CDBG programs, i.e., printed materials, signs, newspaper advertisements, and costs of holding citizen meetings and hearings.

Many activities funded under Cincinnati's NSP project and described in the City's March, 1983 monitoring response, appear to be physical development or neighborhood improvement activities, and therefore are not eligible as citizen participation activities. Some clearly misclassified activities include: facade restoration, neighborhood business development, parking signs, tree planting, police surveillance, and clean-up activities.

Activities which upon scrutiny are found to be improperly classified as citizen participation but are found to meet the regulatory requirements of physical and neighborhood development activities under the provisions of 24 CFR 570.201-204, must be reclassified and rebudgeted for all grant years, including the staff and overhead expenses. Such reclassified activities must also meet all national objective requirements as described in 24 CFR 570.200 and 570.208 of either (1) benefiting low and moderate income persons; (2) aiding in the prevention or elimination of slums or blight; (3) meeting other community development needs having a particular urgency. In contrast, planning and administration activities described in 24 CFR 570.205 and 206 are deemed to address the program's objectives because they support a program of activities in which each activity addresses one of the objectives.

We agree that the issue raised by the City in 1984 regarding the eligibility of fundraising activities in the citizen participation program should also be addressed further. The NSP contract-by-contract spreadsheet indicates that Cincinnati has carried out several fundraising activities after being advised by the Field Office in 1984 that such activities were prohibited. We recommend that the approval letter request additional information from the City on all NSP fundraising activities, as well as any other CDBG fundraising, sufficient to determine eligibility and compliance with national objectives.

Another question posed in your April memo requested guidance on whether the City's procedure of identifying specific projects to be funded after the Final Statement would constitute contingency or local option funding, and cited Jack Stokvis' March 11, 1987 memorandum on the subject. That Stokvis memo clarified the procedure set out by statute which generally prohibits local options and contingencies, unless small amounts of contingency funds are set aside for potential cost overruns for activities described in the Final Statement.

Grantees are required in the CDBG statute and regulations to develop the Final Statement to include all community development activities the grantee proposes to carry out with anticipated CDBG funds. These activities must also be described in sufficient detail, including location, to allow citizens to determine the degree to which they may be affected. The regulations in 24 CFR 570.305 provide for grantees to carry out activities other than those described in the Final Statement, so long as the grantee has provided affected citizens an opportunity to comment on the proposed changes. This requirement calls for the City to obtain additional citizen input, and to submit an amendment following guidelines in 24 CFR 570.305 when activity selections have been made. If the City is found to be in noncompliance, you should advise them to take steps to correct this noncompliance problem, and ensure that corrective actions are taken immediately.

Based on the longevity and degree of performance problems discussed above and identified in monitoring reports and other correspondence, Cincinnati's FY 88 Block Grant should be conditioned as prescribed in the attached grant condition.

The condition was written to allow the City another opportunity to respond to findings regarding the eligibility and compliance with national objectives of specified activities. The proposed grant condition for CP activities funded in FY 81-86 was limited to activities that appear to be physical development or neighborhood improvement based on the HUD monitoring findings described in your October 15, 1982 letter and follow-up. The scope of the proposed condition contains certain activities which were budgeted in FY 87 & 88 and was expanded to include all activities funded under the City's citizen participation budget line item. The condition was based on the HUD monitoring findings described in your letter of August 12, 1987 and subsequent follow-up letters of November 17, 1987, and May 6, 1988.

The amount conditioned for NSP for FY 81-86 primarily covers amounts spent for physical development and neighborhood improvement activities. It does not include such "soft" costs as newsletters, even though some of those costs may not have been sufficiently related to the CDBG program to be eligible, because HUD's advice to the City may not have been clear on this point. However, we expect all citizen participation activities undertaken in FY 87 and in the future to meet the requirements of Section 570.206(b) that are related to the CDBG program.

In addition to disclosing continuing problems regarding NSP activities, on-site monitoring has identified similar problems with seven other activities. It appears that these activities have also been misclassified. While we have a contract-by-contract accounting of activities carried out with Neighborhood Support Program funds for the period of FY 81-86, the same information is needed for all other citizen participation activities for the same period. The grant condition contains a requirement for the City to submit additional information and actions to be taken to resolve outstanding questions regarding the Citizen Participation activities of Special Event/Promotions, Clean Cincinnati, Inc., Day in Eden, Cincinnati Living Campaign, Neighborhood Training, Neighborhood Training and Auditing, Neighborhood Training and Communications.

The information provided by Cincinnati in their May 18th spreadsheets indicates that they have "disallowed" certain activity costs charged to the Neighborhood Support Program (NSP). The City's FY 88 approval letter should request that information be submitted to HUD within 30 days of the execution of the grant agreement which documents that Cincinnati's CDBG account has been reimbursed for \$17,411 from non-federal funding sources for the disallowed NSP activity costs as reported in Cincinnati's spreadsheets.

GRANT CONDITION CITY OF CINCINNATI

Pursuant to Section 104(e) of the Housing and Community Development Act of 1974, as amended, (the Act) and 24 CFR 570.901, the Secretary has reviewed the performance of the City of Cincinnati in carrying out its Community Development Block Grant (CDBG) program and has determined that it has failed to carry out the program in compliance with the requirements of the Act and applicable regulations.

Therefore, notwithstanding any other provisions of this grant agreement and pursuant to 24 CFR 570.910(b)(8), the City shall not obligate or expend \$1,280,373 of its FY 88 Community Development Block Grant until the following conditions 1 & 2 are met:

1.
 - a. For each activity listed below, provide documentation acceptable to HUD which satisfactorily demonstrates that the activity is either properly classified as a citizen participation activity under the provisions of 24 CFR 570.206(b), or has been reclassified as an eligible activity under the provisions of 24 CFR 570.201-204.
 - b. For each activity listed below which is reclassified as an eligible activity pursuant to (A), provide documentation acceptable to HUD which satisfactorily demonstrates that the activity meets all national objective requirements of 24 CFR 570.200 and 570.208.

Such documentation shall reflect:

- a) contract and project numbers;
- b) the National Objective being met;
- c) amount and type of contract;
- d) staff and administrative expenses;
- e) organization expenses; and
- f) planning expenses.

2. For each activity listed below that does not meet the eligibility and national objective requirements of 1.(A) & (B), the City shall reimburse its CDBG program account from non-federal funds by the amount the City actually spent for such activity.

FY 81-86 CITIZEN PARTICIPATION ACTIVITIES/NEIGHBORHOOD SUPPORT

Physical development and neighborhood improvement activities specifically identified in the attached listing. \$413,773

FY 81-86 CITIZEN PARTICIPATION ACTIVITIES/OTHER

Special Event/Promotions \$ 27,500
Clean Cincinnati, Inc. 157,400
Day in Eden 10,000
Cincinnati Living Campaign 10,000
Neighborhood Training 11,700
Neighborhood Training & Auditing 50,000
\$266,600

FY 87 & 88 CITIZEN PARTICIPATION ACTIVITIES

Neighborhood Support Program \$525,000
Clean Cincinnati, Inc. 36,000

Neighborhood Training and Communications 39,000
\$600,000

Failure of the City to satisfy the above conditions within 120 days of the execution of this agreement by the Department of Housing and Urban Development (HUD) shall be cause for HUD to reduce the grant up to the amount conditioned. If at any time during the 120 day period for responding to the grant condition the City shall satisfy either (1) or (2) for any conditioned activity, HUD shall release the funds associated with that activity.